



## Précis Paper

### The Role of Interpreters in Legal Proceedings

A discussion of the unique role of interpreters in legal proceedings, with a focus on the importance of contextual knowledge to an interpreter's job.

#### **Discussion Includes**

- What is the difference between an interpreter and a translator?
- Interpreters and contextual knowledge
- How much should be disclosed to an interpreter about a case?
- Can the period of time spent waiting for a second interpreter cause a delay in proceedings?
- Is it standard practice for solicitors to brief interpreters?

## Précis Paper

### The Role of Interpreters in Legal Proceedings

1. In this edition of BenchTV, Dr Giao Quynh Tran aka Dr Grace Tran (Principal and Founder – ELITE Interpreters, Translators & Teachers) and Anthony El-Helou (Executive Producer, BenchTV – AR Conolly & Company Lawyers) discuss the role of interpreters in legal proceedings, with a focus on the importance of contextual knowledge to an interpreter's job.

#### What is the difference between an interpreter and a translator?

2. Interpreters work with the spoken language while translators work with the written language. Therefore, if one is speaking with another person who does not speak English, an interpreter is required, but if one has a written document that needs to be transferred into another language, a translator is required.

#### Interpreters and contextual knowledge

3. It is important that solicitors give interpreters as much contextual knowledge as possible. One particular solicitor Dr Tran has worked with always briefs her on the case in question prior to every job she has done for him. However, in one particular instance, while briefing Dr Tran on a case, the solicitor was stopped by the retained barrister, who told him that an interpreter should simply be like a machine, transferring words from one language to another with no further understanding of the subject matter.
4. This raises the question of whether interpreters should simply interpret mechanically, or whether they should interpret having contextual knowledge of the case at hand. Dr Tran is not in favour of interpreters interpreting mechanically because she believes that in order for an interpreter to do a good job, they need background information, as a particular word may have one meaning in one language and different equivalents in another language. Without contextual knowledge, it is difficult for an interpreter to know which equivalent to adopt. Language means nothing out of context, which is why contextual knowledge is so important.

#### How much should be disclosed to an interpreter about a case?

5. There is a fine distinction between what can and cannot be disclosed to an interpreter about a case for which they have been retained. This is best illustrated through the use of two anecdotes from Dr Tran.
6. The first concerns a colleague of Dr Tran's who preferred not to go to court as she had trouble comprehending what the lawyers were saying. One day, however, she was sent to

the Supreme Court of NSW for an appeal, where, plucking up her courage, she asked the solicitor on what grounds the appeal was based. The solicitor was kind enough to run through the grounds of appeal with her, enabling the interpreter to have what she later described to Dr Tran as "the best interpreting session of her career".

7. This example illustrates that if all solicitors did what the solicitor in this case did, interpreters would improve rapidly and be able to perform better. More on point, however, the example is illustrative of the type of information a solicitor may be able to disclose to an interpreter about the case.
8. The second anecdote provides an example of the kind of information which should not be disclosed to an interpreter. This case concerned a trial taking place in 2017 at the Sydney District Court, in which a Vietnamese interpreter had been retained. The interpreter interpreted a phrase uttered by the accused during evidence-in-chief as "Co Quang". In Vietnamese, "Co" means "aunt" or "auntie", while "Quang" is a given name. The defence objected to this interpretation because "Quang" was actually the name of a person who had been found guilty of a related charge; therefore, interpreting the phrase as "Co Quang" had the potential to incriminate the accused. The defence sought a second opinion on the interpretation of the phrase, and so a second interpreter was called.
9. Dr Tran happened to be in court that day and informally offered her assistance on the interpretation of the phrase. She knew that it was not "Co Quang", but rather "Co cua anh", which, in this context, meant "his aunt" or "his auntie", not "Aunt Quang" or "Auntie Quang" as per the first interpreter's interpretation. However, as Dr Tran was in court that day as interpreter for another matter, she was not in a position to provide the second opinion sought by the defence.
10. There was a wait of a few hours for the second interpreter. However, during this time, the second interpreter had been briefed by the first interpreter, who told the second interpreter that he had interpreted the phrase as "Co Quang", but the defence did not agree with this interpretation. When the second interpreter subsequently stepped into the witness box and listened to the recording containing the disputed phrase, he reached the same interpretation as the first interpreter, namely, that the disputed phrase was "Co Quang", and maintained this interpretation even after listening to the recording of the accused's evidence-in-chief a number of times over. Later on, however, it turned out that the correct interpretation of the phrase was "Co cua anh" – that is, "his aunt", not "Aunt Quang". The second interpreter told Dr Tran that if he had not been briefed about the disputed phrase beforehand, he might have arrived at the correct interpretation of "Co cua anh".

11. This anecdote serves as an important example of what should not be disclosed to an interpreter – in this case, the focal point under investigation – in order not to cloud the interpreter's judgment and to allow them to reach as impartial an interpretation of the spoken word before them as possible.

Can the period of time spent waiting for a second interpreter cause a delay in proceedings?

12. Yes, however, measures can be taken to prevent these delays from occurring, such as having transcripts and recorded interviews checked prior to going to court, especially at the points where a solicitor has been told that questions have arisen. Of course, this may not always be possible, such as in the second example discussed above, where the error occurs on the spot during evidence-in-chief or cross-examination. In such a situation, it is suggested that efforts be made to secure the service of the best interpreter in your respective language, even at a cost, to avoid such errors and delays in proceedings.

Is it standard practice for solicitors to brief interpreters?

13. It has not yet become standard practice for solicitors to brief interpreters. However, Dr Tran is in favour of it becoming so. She recognises that the lack of this standard practice could be a time issue, however, advises solicitors to try to brief interpreters if they have capacity to do so. The more background and contextual information an interpreter has to assist them with their interpretation, the better a job they will be able to do. By way of further example, one hour of simultaneous interpreting at a political conference might involve weeks of preparation by the interpreter studying the subject matter in question, in order to enable them to do a good job.
14. Many interpreters are reluctant to ask for background information as they may fear rejection, however, Dr Tran encourages them to ask as they have nothing to lose by doing so. Equally, she encourages solicitors to volunteer background information to interpreters, because the interpreter can only interpret what he or she understands. And when he or she understands well, he or she can interpret well, which can only fare positively for the practitioner's client.

## **BIOGRAPHY**

### Dr Giao Quynh Tran (Dr Grace Tran)

Founder, ELITE Interpreters, Translators & Teachers, Sydney

Dr Tran has a PhD in Applied Linguistics (UniMelb) and NAATI Accreditation for a Professional Interpreter and Translator in English and Vietnamese, both directions. Dr Tran has 22 years of experience in interpreting and translation in Vietnam, the US, and Australia. Having interpreted regularly in Australian courts for the past 14 years, she has made all the lawyers and clients whom she has worked with happy. She is teaching postgraduate interpreting and translation programs at the University of Western Sydney.

### Anthony EL-Helou

Senior Producer (Professional Development), College of Law, Sydney

Anthony is the Senior Producer for Professional Development at the College of Law. Anthony graduated from the University of Western Sydney with a Bachelor of Communications (majoring in media arts production) and a Bachelor of Laws in 2018. Prior to working at the College of Law, Anthony was the Executive Producer for BenchTV, dealing with all facets of pre- and post-production.